



# Massachusetts Department of Elementary and Secondary Education

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February 16, 2021

Dr. John Provost, Superintendent  
Northampton Public Schools  
212 Main Street  
Northampton, MA 01060

Re: Intake PRS 4840

Student Name:

**Letter of Finding**

Dear Dr. Provost:

On December 16, 2020, the Massachusetts Department of Elementary and Secondary Education (Department) received a written statement of concern from (Complainant) involving Northampton Public Schools (District). As the PRS Specialist inquiring into this matter, I have taken the following steps:

- Reviewed the statement of concern and supporting documentation
- Requested a Local Report from the District
- Reviewed the District's Local Report and supporting documentation submitted to the Department on January 11, 2021
- Spoke to the Complainant regarding the Local Report
- Reviewed relevant state and federal special education laws and regulations
- Consulted with other Problem Resolution System staff

PRS' inquiries determined noncompliance, and we are advising the District of our findings and the required corrective actions. The concerns, our findings, and corrective actions follow.

## CONCERNS

1. The Complainant alleges the District is not implementing the , 2<sup>nd</sup> grade student's IEP. Specifically, the student is currently attending school in-person in the mornings for math and English instruction. In the afternoon the student is assigned to remote learning but the screen time negatively affects his behavior resulting in violent outbursts. The Complainant asserts the District has not provided curriculum support (outside the remote setting) to allow the student to make adequate progress toward his IEP goals. The Complainant states she is currently responsible for teaching the student in the afternoons without lesson plans or resources from the District sufficient to guide his learning. These concerns were investigated pursuant to 603 CMR 28.05(7)(b):

*Upon parental response to the proposed IEP and proposed placement, the school district shall implement all accepted elements of the IEP without delay.*

The Department also reviewed this allegation using the Department's Guidance on Fall 2020 Special Education Services issued on July 9, 2020:

*"If special education services are provided differently than as they are described in a student's IEP, parents must be notified in writing with specific information about how those services will be provided after they have discussed such matters with a teacher or IEP liaison. Written parent notification describing any differences in how special education services will be delivered should include how, where and when specialized services are being provided, and should be dated to reflect when services that are being provided differently begin. Parental consent is not required to implement modified in-person, hybrid or remote special education services; however, such documentation should describe the school's and district's efforts to provide services as closely aligned to the way they are described in the IEP as possible. Schools and districts can provide notification of remote services to families in multiple ways, e.g., U.S. mail, email, student information systems, or online communication platforms if schools and districts determine that parents can access online communications effectively."*

## FINDINGS

1. \_\_\_\_\_ a \_\_\_\_\_, 2<sup>nd</sup> grade student (Student) qualifies for special education and related services with primary eligibility in \_\_\_\_\_
2. The Student's last fully accepted IEP (IEP #1) was developed before he entered Kindergarten and signed by the Complainant on September \_\_\_\_\_ 2018.
3. The Team developed and proposed new IEPs at the Student's annual review meetings on January \_\_\_\_\_ 2019 (IEP #2) and February \_\_\_\_\_ 2020 (IEP #3). The Complainant did not sign IEP #2 or IEP #3.
4. The District's Local Report (Local Report) states, "[Student's] last signed IEP [IEP #1] was from the 2017-2018 school year. The District recently pointed this out to [Complainant] and she indicated that she thought she signed the IEP [IEP #3] after the February 2020 meeting."
5. For this complaint, the Department reviewed the last signed IEP (IEP #1) for implementation (*excluding \_\_\_\_\_ and \_\_\_\_\_ specific services*) but notes in red the IEP #3 goals and Service Delivery Grid for comparison because the Local Report indicates the Complainant understood IEP #3 was accepted.
6. IEP #1 includes the following goals: Goal #1, \_\_\_\_\_; Goal #2, \_\_\_\_\_, Goal #3, \_\_\_\_\_, Goal #4, \_\_\_\_\_, and Goal #5, \_\_\_\_\_.
7. IEP #3 includes the following goals: Goal #1, \_\_\_\_\_, Goal #2, \_\_\_\_\_; Goal #3, \_\_\_\_\_ and Goal #4, \_\_\_\_\_.
8. IEP #1 and IEP #3 Service Delivery Grid(s) include the following:

**A: Consultation (Indirect Services to School Personnel and Parents)**

Goal	Type of Service	Type of Personnel	Frequency/duration per cycle	Start Date	End Date
All 1,3	Consult		1x300 min/yearly 1x300 min/yearly	2018 2020	2018 2021
1,2,4 1	Consult		1x800 min/yearly 1x800 min/yearly	2017 2020	2018 2021
1,4,5 4	Consult		1x360 min/yearly 1x360 min/yearly	2017 2020	2018 2021
2 2	Consult		1x300 min/yearly 1x300 min/yearly	2018 2020	2018 2021
2,3 3	Consult		1x360 min/yearly 1x360 min/yearly	2017 2020	2018 2021

**B: Special Education and Related Services in General Education Classroom (Direct Service)**

Goal	Type of Service	Type of Personnel	Frequency/duration per cycle	Start Date	End Date
All All			5x240 min/weekly 5x360 min/5 days	2018 2020	2018 2021
2 2			1x30 min/5 days 1x30 min/5 days	2018 2020	2018 2021
2,3 3			2x30 min/5 days 2x30 min/5 days	2018 2020	2018 2021

**C. Special Education and Related Services in Other Settings (Direct Service)**

Goal	Type of Service	Type of Personnel	Frequency/duration per cycle	Start Date	End Date
1,2,4 1			5x120 min/5 days 2x20 min/5 days	2018 2020	2018 2021
2 2			1x30 min/5 days 1x30 min/5 days	2018 2020	2018 2021
4,5 4	Social Skills Communication	SLP/SLPA SLP/SLPA	2x30 min/5 days 2x30 min/5 days	2018 2020	2018 2021

9. On March 13, 2020, the District suspended in-person instruction due to the COVID-19 emergency.
10. Prior to the suspension of in-person instruction, the District implemented the Student's IEP #1 as written.
11. The Student received \_\_\_\_\_ services June to July of 2020.
12. In the return to school survey, the Complainant selected full time in-person services, noting in her response:

My child cannot learn electronically. It is detrimental to [redacted] behavior and our home life for him to use screens. A remote learning plan for him would have to be done (and has been done during the quarantine by me) the old fashioned way with pencil and paper. The remote learning plans sent out by the school so far have been unhelpful for me and my child.

13. On September 21, 2020, the Student returned to school in-person 4.5 days per week (Monday through Friday with a half day on Wednesdays).
14. On October 16, 2020, the Complainant opted to send the Student to school in the morning only for in-person instruction. She felt the Student's afternoon schedule was unproductive and included too much screen time.
15. The Local Report indicates the Student received all services in IEP #1 during in-person learning except [redacted] because the District was in the process of hiring a new [redacted].
16. The new [redacted] began on November 20, 2020. The Local Report states the District will provide the Student compensatory [redacted] services during the summer of 2021.
17. The Complainant requested lesson plans and learning packets for the Student for his afternoons at home. The Local Report includes samples of the learning materials provided.
18. The District worked with the Complainant to provide the materials she requested. Both parties acknowledge it took some time to work out the logistics and the Complainant felt the District's initial efforts were insufficient (vague lesson plans placing too much burden on the Complainant for preparation and execution).
19. The Complainant engaged a [redacted] (not affiliated with the District) to work with the Student in the afternoon.
20. The Department confirmed with the Complainant in a telephone conversation that the Student is currently doing well due to [redacted] support and improved materials from District.
21. The Department confirmed with the District that the Student is receiving the services in IEP #1 when he attends school in-person in the morning.
22. The Complainant and the District agreed to hold a facilitated IEP Team meeting to review the Student's current IEP status (unsigned IEP #3) and review his progress.
23. The facilitated IEP meeting is scheduled for March 22, 2021.

## **CONCLUSIONS**

The following determination represents the Department's interpretation of the relevant legal requirements in the context of the facts presented. The conclusions reached in this letter do not establish a policy, rule, or precedent that would apply in all circumstances.

1. **Based on the information gathered the Department finds, and the District acknowledges, noncompliance with 603 CMR 28.05 (7)(b) as the Student did not receive [redacted] services from September 21, 2020 through November 9, 2020 due to staffing. The Student's other IEP services were fully implemented.**

2. **The Department notes the District made effective efforts to address the Complainant's concerns regarding screen time by providing hard copy materials to the Student for afternoon learning which was not a required service per his IEP.**
3. **The Department notes the District made effective efforts to provide the Student a free appropriate public education (FAPE) despite his unsigned IEP. The services and accommodations implemented from the Student's "stay put" IEP were nearly identical to the services in the subsequent proposed IEPs and the District scheduled a facilitated IEP meeting to address the issue.**

The Department notes the process for addressing unsigned IEPs pursuant to 603 CMR 28.07(1)(b):

*If, subsequent to initial evaluation and initial placement and after following the procedures required by 603 CMR 28.00, the school district is unable to obtain parental consent to a reevaluation or to placement in a special education program subsequent to the initial placement, or the parent revokes consent to such reevaluation or placement, the school district shall consider with the parent whether such action will result in the denial of a free appropriate public education to the student. If, after consideration, the school district determines that the parent's failure or refusal to consent will result in a denial of a free appropriate public education to the student, it shall seek resolution of the dispute through the procedures provided in 603 CMR 28.08. Participation by the parent in such consideration shall be voluntary and the failure or refusal of the parent to participate shall not preclude the school district from taking appropriate action pursuant to 603 CMR 28.08 to resolve the dispute. This provision shall not apply if the parent has revoked consent to all special education and related services as provided in 603 CMR 28.07(1)(a)(4).*

4. Please note, the PRS used 603 CMR 28.05(7)(b) to examine the period prior to school closures in March 2020. Subsequent to the COVID-19 related school closures, the Department examined the information provided by both parties using the USDOE supplemental fact sheet and other relevant guidance regarding COVID-19.
5. Regarding the implementation of IEPs during the suspension of in-person learning due to the COVID-19 emergency closure, the United States Department of Education issued a supplemental fact sheet stating:

The Department understands that, during this national emergency, schools may not be able to provide all services in the same manner they are typically provided. While some schools might choose to safely, and in accordance with state law, provide certain IEP services to some students in-person, it may be unfeasible or unsafe for some institutions, during current emergency school closures, to provide hands-on physical therapy, occupational therapy, or tactile sign language educational services. Many disability-related modifications and services may be

effectively provided online. These may include, for instance, extensions of time for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing.” The policy guidance also stated that Districts must provide a free and appropriate education (FAPE) to students with disabilities and that, “It is important to emphasize that federal disability law allows for flexibility in determining how to meet *the individual needs of students with disabilities* (emphasis added).” And that, “school districts must provide a free and appropriate public education (FAPE) consistent with the need to protect the health and safety of students with disabilities and those individuals providing education, specialized instruction, and related services to these students.

<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/SupplementalFactSheet%203.21.20%20FINAL.pdf>,

6. On March 21, 2020, the United States Department of Education in its Supplemental Fact Sheet stated:

[M]any disability-related modifications and services may be effectively provided online” but that “federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities [and that] the determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency.” The United States Department of Education also stated that “where there has been an inevitable delay in providing services – or even making decisions about how to provide services - IEP teams (as noted in the March 12, 2020 guidance) must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations.”

#### PROPOSED CORRECTIVE ACTION ACCEPTED BY THE DEPARTMENT

1. The Department accepts the District’s proposed corrective action of providing the Student compensatory services during the summer of 2021 for his missed sessions from September 21, 2020 to November 9, 2020.

#### CORRECTIVE ACTION THAT MUST BE IMPLEMENTED

2. Provide the Department a copy of the Student’s IEP including the proposed sessions no later than May 3, 2021.

Please note that for matters related to special education or Section 504, the parties may seek mediation or a hearing through the Bureau of Special Education Appeals (BSEA) on the same issues addressed in this letter. A hearing, however, is a new proceeding and is not for the purposes of reviewing the Department’s decision in this matter. Any order or decision issued by the BSEA on the issues raised in this complaint would be binding.

While the Department does not consider appeals of its decisions, we would be pleased to provide further clarification of all information and requirements noted above if you find it necessary. Please call (781) 338-3727 or email [jennifer.simpson@mass.gov](mailto:jennifer.simpson@mass.gov).

Sincerely,

*Jennifer Simpson*

Jennifer Simpson, PRS Specialist  
Problem Resolution System

*Paula Twomey*

Paula Twomey, PRS Supervisor  
Problem Resolution System

cc: Pamela Plumer, Special Education Director, Northampton Public Schools

Enclosure: Corrective Action Report Form